

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	Case No.: 1:04 CV 1432
)	
Plaintiff)	
)	
v.)	JUDGE SOLOMON OLIVER, JR.
)	
MICHAEL A. ALLAMBY,)	
)	
Defendant)	<u>ORDER</u>

Plaintiff, the United States of America (“United States” or “Plaintiff”), seeks a preliminary injunction against Defendant Michael Allamby (“Allamby” or “Defendant”), ordering Defendant to stop preparing tax returns. (ECF No. 6.) After reviewing the briefs submitted by both parties, the court grants the Preliminary Injunction for the reasons stated below.

I. FACTS

Defendant Allamby prepares federal income tax returns for persons residing in and around Cleveland, Ohio. After nearly twenty years preparing tax returns, in 1994 Allamby began interpreting the Internal Revenue Service’s (“IRS”) instructions to Form 1040A (the U.S. Individual Income Tax Return) as requiring individuals to report only their “income from” wages, salaries, and tips on their tax returns. Allamby believes that this amount is zero rather than the amount of wages, salaries, and tips actually

received by individuals, because one does not receive “income from” wages unless one invests their wages to earn income on them. (Def. Letter to the Court 7-9.) Allamby’s interpretation results in many of Allamby’s customers reporting no income, despite their having earned wages.

Allamby does not dispute that this is his interpretation, nor does he dispute having prepared tax returns for many of his customers based on this interpretation. Allamby contends that no one has been able to show him the law by which Congress executed its power to impose income taxes under the Sixteenth Amendment to the United States Constitution.

Despite having received warnings from the IRS and other government officials that the Internal Revenue Code classifies wages and salaries as gross income subject to taxation, Allamby continues to prepare tax returns reporting zero total income for individuals who earned wages or salaries. According to the United States, Allamby told IRS agents that he plans to continue preparing tax returns according to his interpretation of the instructions. (Farley Decl. ¶ 33.)

Allamby has published a book entitled, “To the Best of My Knowledge and Belief” which expresses his view that individuals may lawfully report zero total income on their income tax returns despite having earned wages or salaries reported on Form W-2. In the book, Allamby writes:

The wage earner has never been nor can ever be subject to income taxes. . . [Y]ou as a wage earner are not obligated or liable for income taxes on your wages. April 15th should be just another day to you. As a wage earner you have not created an income tax obligation which is due by that date.

(Pl. Prelim. Inj. Ex. 26 at 21.)

The IRS claims to have identified over 330 federal income tax returns prepared by Allamby, 69 of which omit wage or salary income even though the accompanying Forms W-2 show that the customers

earned wages or salaries that year. (Farley Decl. ¶¶ 49-50.) Allamby does not specifically contest these numbers.

II. LAW AND ANALYSIS

A. Standard for Preliminary Injunction

To obtain relief in a statutory injunction action such as this, the plaintiff must demonstrate that the defendant has violated a statute and that a reasonable likelihood of future violations exists. Because 26 U.S.C. §§ 7407 and 7408 set forth specific criteria for injunctive relief, the United States need only meet those criteria, without reference to traditional equitable factors, for this court to issue a preliminary injunction under those sections. *United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000).

To obtain an injunction under 26 U.S.C. § 7407, the United States may show, among other things, that the defendant (1) engaged in conduct subject to penalty under 26 U.S.C. § 6694, or engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, and (2) that injunctive relief is appropriate to prevent the recurrence of such conduct. To obtain an injunction preventing the defendant from preparing income tax returns, the United States must additionally show that the defendant engaged in this conduct continually or repeatedly and that a narrower injunction would be insufficient to prevent the defendant from interfering with the proper administration of the internal revenue laws.

To obtain an injunction under 26 U.S.C. § 7408, the United States must show that the defendant engaged in conduct subject to penalty under I.R.C. §§ 6700 or 6701 and that injunctive relief is appropriate to prevent the recurrence of such conduct.

Finally, to obtain an injunction under 26 U.S.C. § 7402(a), the United States must show that an injunction is necessary or appropriate for the enforcement of the internal revenue laws. The authority granted by this section is broad: “[t]he district courts of the United States . . . shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction . . . and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws.” 26 U.S.C. § 7402(a).

B. Analysis

Based on the evidence presented by the parties, the court finds that the United States has met the statutory burden for an injunction under 26 U.S.C. §§ 7407, 7408, and 7402(a).

1. Injunction under 26 U.S.C. §§ 7407 and 7408

The government has presented uncontroverted evidence that the Defendant prepares tax returns based on the incorrect interpretation that wages are not taxable income, and that this practice results in the under-reporting of income and tax owed. Courts have repeatedly held that such an interpretation is without merit and frivolous. *E.g., Sisemore v. United States*, 797 F.2d 268, 270-71 (6th Cir. 1986); *Thacker v. United States*, 2000 U.S. App. LEXIS 15721, *4 (6th Cir. 2000). Therefore, Defendant’s activities interfere with the administration of the internal revenue laws under 26 U.S.C. § 7407. Additionally, Defendant has indicated, despite receiving countless warnings and notifications of the proper interpretation of the tax instructions, that he will continue to prepare tax returns in the same manner. Therefore, an injunction is necessary to prevent further interference. Finally, the United States has shown evidence that Defendant regularly and repeatedly engaged in such conduct, and this evidence is sufficient to grant an

injunction preventing Defendant from acting as a income tax preparer. Therefore, an injunction is proper under 26 U.S.C. § 7407.

The United States has also shown evidence suggesting that Defendant violated 26 U.S.C. § 6701. This section is violated by (1) aiding or assisting “the preparation or presentation of any portion of a return;” (2) “know[ing] (or ha[ving] reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws;” and (3) “know[ing] that such portion . . . would result in an understatement of the liability for tax of another person.” 26 U.S.C. § 6701(a). Defendant assisted in preparing tax returns he knew would be submitted to the IRS, and knew, based on warnings from IRS officials and others, that this practice would understate the tax liability of his customers. Defendant is and has been violating 26 U.S.C. § 6701(a). Therefore, an injunction is proper under 26 U.S.C. § 7408.

2. Injunction under 26 U.S.C. § 7402(a)

26 U.S.C. § 7402(a) grants broad discretion to federal courts to issue injunctions necessary to enforce internal revenue laws. Injunctive relief pursuant to 26 U.S.C. § 7402(a) may extend to require tax return preparers to provide customer lists to the government for enforcement purposes. *E.g.*, 26 U.S.C. § 6107(b); *United States v. Mosher*, 20003 WL 21153355 (W.D. Mich. Apr. 7, 2003). Customer lists will enable the government to monitor enforcement of the injunction. Therefore, the court orders Defendant to provide his customer lists to the government within 14 business days of this Order. Additionally, the court orders Defendant to notify his current customers, with which he has outstanding obligations, of this court’s Order by sending them a copy of the attached notice. Defendant must also provide the notification to new customers inquiring about his services. The notification requirement will ensure that the injunction is enforced.

III. CONCLUSION

The United States has presented evidence that the Defendant has repeatedly engaged in fraudulent and deceptive conduct that substantially interferes with the administration of the internal revenue laws. Moreover, the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct. The court further finds that a preliminary injunction is necessary and appropriate in this instance to enforce the internal revenue laws. Therefore, the court orders that:

1. Pursuant to I.R.C. §§ 7402(a), 7407, and 7408, the Defendant, Michael Allamby, and his representatives, agents, servants, employees, attorneys, and any persons in active concert or participation with him, are enjoined during the pendency of this case from directly or indirectly:
 - a. Preparing any federal tax returns, forms, or claims for refunds for others;
 - b. Representing others before the IRS in any way, including attending meetings at IRS offices on behalf of others or submitting documents to the IRS on behalf of others;
 - c. Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws.
2. Within 14 days from the entry of this Order, the Defendant shall turn over to the United States a list of the persons or entities for whom the Defendant has prepared or assisted in preparing any federal income tax return or tax-related document since 1994. The list shall include the name, taxpayer identification number, and address for such persons or entities.
3. Within 14 days from the entry of this Order, the Defendant shall send a copy of the attached “Notice to Customers of Michael Allamby” to all customers for whom he is currently preparing tax returns, all customers for whom he has any outstanding tax work pending, and all customers with whom he has a contract or agreement to prepare future tax returns.

4. In the event that any current, new, or old customers approach Defendant for assistance in preparing their tax returns, Defendant shall immediately provide a signed copy of the attached "Notice to Customers of Michael Allamby" to such customers.
5. The United States is permitted to conduct discovery to monitor the Defendant's compliance with this Order.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

November 3, 2004

NOTICE TO CUSTOMERS OF MICHAEL A. ALLAMBY

I regret to inform you that the United States District Court for the Northern District of Ohio has enjoined me from preparing or assisting in the preparation of tax returns, pending the outcome of a court case against me. I am prohibited by court order from assisting anyone with their tax returns, accompanying anyone to the Internal Revenue Service offices, or submitting documents to the Internal Revenue Service.

The Court has preliminarily found that I have been preparing frivolous federal tax returns that do not report wages and salaries as income. If I prepared a tax return for you that did not correctly report your tax liability, you may be subject to civil or criminal tax penalties, or both. You may wish to contact a licensed attorney or certified public accountant to determine whether any tax returns that I prepared for you were improper and what you should do to correct any false or inaccurate returns. Thank you for your understanding and cooperation.

MICHAEL A. ALLAMBY